

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0507

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT
NAPA COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Lake Berryessa Resort Improvement District (hereafter Discharger) based on failure to comply with Section 13376 of the California Water Code (CWC). This Complaint is issued pursuant to CWC Section 13385, which authorizes the imposition of administrative civil liability.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. Waste Discharge Requirements (WDRs) Order No. 95-171, adopted by the Regional Board on 23 June 1995, prescribes requirements for the discharge of domestic wastewater from a treatment system owned and operated by Lake Berryessa Resort Improvement District (hereafter referred to as "Discharger").
2. The Discharger owns and operates the wastewater collection, treatment and disposal system that treats up to 35,000 gallons per day of domestic wastewater from the Lake Berryessa Estates development, as well as backwash water from the community's water treatment plant.
3. Wastewater flows via gravity to three lift stations where it is pumped to a 91,000-gallon aboveground holding tank and a 20,000-gallon overflow tank. From the tanks, the wastewater is pumped into two percolation/evaporation ponds, followed by gravity flow into five other evaporation/percolation ponds (two of which are not regulated by WDRs Order No. 95-171). The wastewater is not disinfected prior to discharge to the percolation/evaporation ponds.

Previous Enforcement

4. The Discharger has had a long history of sewage spills at this facility. On 28 December 1995, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. 95-516. The ACLC was for a raw sewage spill to Putah Creek estimated at approximately 50,000 gallons and was in the amount of \$25,000. In addition to the monetary penalty, the Discharger was required, pursuant to CWC Section 13267, to submit a plan to complete improvements to the system to prevent future unauthorized discharges of wastewater. The ACLC was withdrawn in January 1996 following submittal of a revised compliance schedule.
5. In April 1996, the Discharger submitted a report titled "*Capacity Study for the Wastewater Treatment and Disposal Facilities for Lake Berryessa Resort Improvement District.*" In summary, the report concluded that the infiltration/inflow (I/I) issues at the wastewater collection system are a serious problem and can overwhelm the system's storage and disposal capacity. The report included recommendations for studies to identify sources of I/I and to determine additional

methods of wastewater disposal.

6. Cease and Desist (C&D) Order No. 96-233 was subsequently adopted by the Regional Board on 20 September 1996. The C&D Order reflects the Discharger's revised compliance schedule (the document upon which the withdrawal of the ACLC was based). The C&D required the Discharger to: begin an I/I study, establish a financial plan, select and design an upgrade to the wastewater facility, and complete construction of the project. The final upgrade was to have been completed by 15 September 2001, and was to have resulted in compliance with the WDRs.
7. The Discharger has not complied with the C&D. The only items submitted were an I/I study plan and a five-year financial plan, which were submitted during 1996. The Discharger has not modified its wastewater treatment, storage, or disposal system such that it complies with its WDRs.

Recent Violations of WDRs Order No. 95-171

8. In February and March 1998, the Discharger experienced overflows of domestic wastewater from the storage ponds to surface water, which are a tributary to Lake Berryessa. The volume of spills are unknown, but were the result of inadequate capacity in the ponds.
9. In January 1999, a landslide ruptured the force main from the holding tank to the treatment pond system resulting in a discharge of approximately 50 gallons raw sewage to a tributary of Lake Berryessa.
10. From 6 March to 20 March 2000, Pond No. 5 spilled wastewater at a rate of approximately 20 gallons per minute to Stone Coral Creek (a tributary to Lake Berryessa), for an estimated total release of 432,000 gallons. On 8 May 2000, a Notice of Violation (NOV) was issued for the discharge.
11. On 19 February 2001, a force main coupling leaked within 30 feet of Putah Creek, releasing approximately 100 gallons of wastewater. The leak occurred in the pipeline, which followed the access road through the slide area from the holding tank to the treatment ponds.
12. On 2 and 3 January 2002, approximately 15,000 gallons of raw sewage overflowed from the holding tank near Putah Creek. Three days later, on 6 January 2002, approximately 3,000 gallons of raw sewage again spilled from the holding tank. According to the Discharger, no wastewater entered any surface waters from either spill. Both spills were a result of I/I into the collection system.
13. On 25 January 2002, staff conducted an inspection of the facility and noted a surface discharge from a spray application field into Stone Corral Creek, a tributary to Lake Berryessa. The WDRs do not authorize any discharge to a sprayfield. The Discharger indicated that the ponds were at capacity and were threatening to spill during rainfall events. Staff observed a large pump and hose that appeared to be used to remove water from Pond No. 4 to the swale adjacent to Stone Corral Creek.

14. On 18 February 2004, the Discharger was issued a NOV for a 300-gallon wastewater spill that occurred on 29 December 2003 from the holding tank. According to the Discharger, the spill remained on land and was the result of I/I from a large storm.
15. On 8 March 2004, between 20 and 30 gallons of raw sewage seeped from a manhole on to the street at Colt Court.
16. During a site inspection on 11 March 2004, staff observed abundant vegetation in and around Ponds Nos. 1 through 3, and a sprinkler irrigation system located next to Pond No. 7. The sprinkler system is not authorized in the WDRs. A NOV was issued on 8 April 2004.
17. On 14 February 2005, the Discharger was issued a NOV for a spill of domestic wastewater and water treatment plant backwash water from Pond No.5 to Stone Corral Creek. The spill began on 11 January 2005, and as of 28 February 2005 totaled approximately 2,346,400 gallons. The spill is the result of inflow/infiltration problems in the collection system and the lack of capacity in the ponds, and is continuing as of the date of this Complaint. The Discharger states that the wastewater is receiving minimal chlorine disinfection prior to being discharged.
18. To summarize, as of March 1998, the Discharger reported ten spills of domestic wastewater and backwash water. Five of these spills were to land and five were to surface waters.

REGULATORY CONSIDERATIONS

19. Discharge Prohibition A.1 of Order No. 95-171 states: *"The direct discharge of wastes to surface waters or surface water drainage courses is prohibited."*
20. Discharge Prohibition A.2 of Order No. 95-171 states: *"The bypass or overflow of untreated or partially treated waste is prohibited."*
21. As described in the above Findings, the Discharger has violated WDRs Order No. 95-171, specifically, Discharge Prohibitions A.1 and A.2, by discharging wastes and effluent to surface waters or surface water drainage courses and by the bypass of untreated or partially treated effluent.
22. Section 301 of the Clean Water Act and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
23. CWC Section 13376 states, in part: *"Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260..." and "The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit] ...is prohibited."*

24. The Discharger, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, has violated CWC section 13376. WDRs Order No. 95-171 is not an NPDES permit.

25. CWC Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):

(1) Section 13375 or 13376.

“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

25. For discharging waste in violation of the WDRs and without obtaining an NPDES permit, the Regional Board may assess administrative civil liability based on CWC section 13385. The maximum administrative civil liability which can be imposed by the Regional Board under CWC Section 13385 is \$10,000 per day of discharge plus \$10 per gallon discharged in excess of 1,000 gallons. As stated in the Findings, 2,778,450 gallons were discharged to surface waters over a period of 70 days. Of this, a total of 2,718,400 gallons were discharged in excess of 1,000 gallons per spill event. Therefore, the maximum administrative civil liability is \$700,000 (70 days times \$10,000 per day) plus \$27,184,000 (2,718,400 gallons minus 1,000 gallons per event times \$10 per gallon), for a total maximum liability of \$27,884,000.

26. CWC Section 13385(e) states:

“In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

27. Pursuant to CWC Section 13385(e), the minimum administrative civil liability is equivalent to the economic benefit accrued by the Discharger in not implementing the management and/or physical improvements necessary to prevent the discharges. In general, the discharges are due to inflow/infiltration within the collection system and lack of storage and disposal capacity. It is estimated that the Discharger has saved at least \$393,000 in not taking actions to prevent the violations described in this Complaint.
28. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of four hundred thousand dollars (\$400,000). The amount of the liability proposed is based upon a review of the factors set forth in CWC Section 13385 cited in Finding No. 26 above, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **28/29 April 2005** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*), to the Regional Board's office at 11020 Sun Center Drive, Rancho Cordova, Sacramento, CA 95670, by **31 March 2005**.

THOMAS R. PINKOS, Executive Officer

4 March 2005

(Date)

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the Lake Berryessa Resort Improvement District (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0507 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of four hundred thousand dollars (\$400,000) by check, which contains a reference to “ACL Complaint No. R5-2005-0507” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)